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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of the)
) CC Docket No. 00-175
Biennial Regulatory Review 2000)

BIENNIAL REVIEW 2000 REPLY COMMENTS
OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Reply Comments in response to the Staff Report for the Biennial Review 2000.²

INTRODUCTION

In its comments, CTIA addressed generally its support for the Commission's efforts to reduce unduly burdensome or redundant regulatory obligations -- especially in competitive industries such as CMRS where the interests of consumers are satisfied through the operation of

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Biennial Review 2000 Staff Report Released, Public Notice, FCC 00-346 (rel. Sep. 19, 2000) ("Staff Report").

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market forces. In addition, CTIA identified specific provisions in the Commission's rules that require revision or elimination pursuant to the terms of Section 11.³ These include:

- elimination of the CMRS spectrum cap, 47 C.F.R. § 20.6;
- privatization of the assignment and management of cellular system identification numbers ("SIDs"), 47 C.F.R. § 22.941;
- conforming the PCS renewal process with the cellular renewal process, 47 C.F.R. § 24.16; and
- streamlining the procedures for compliance with the National Historic Preservation Act ("NHPA").

As CTIA demonstrated, eliminating or amending these regulations will ensure that market forces continue to spur vigorous growth in CMRS services, while reducing regulatory obligations that unnecessarily burden both CMRS providers and the Commission. Several commenters agreed. Specifically, Alloy, LLC ("Alloy") maintained that the Commission should promptly initiate a proceeding to eliminate the spectrum cap,⁴ while expressing its support of the Commission's efforts to develop a programmatic agreement that streamlines historic preservation compliance requirements.⁵

Furthermore, Alloy and the United States Telecom Association ("USTA") addressed additional provisions that should be included in the Commission's biennial review. Among those, CTIA addresses herein its support for streamlining the Commission's Part 17 rules and for

³ 47 U.S.C. § 161.

⁴ Alloy Comments at 6; see Comments of the Coalition of Independent Cellular Carriers (requesting the Commission rescind Section 22.942, 47 C.F.R. § 22.942, which prohibits a licensee from having ownership interests in licenses for both cellular channel blocks in overlapping CGSAs).

⁵ Alloy Comments at 9.

suspending CALEA compliance requirements until the Commission has completed its proceeding on remand.

PART 17 -- CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA STRUCTURES

In Part 17 of its rules, the Commission sets forth the requirements for construction and coordination of wireless communications facilities. In its report, the staff identifies certain rules “that it believes could be modified or eliminated without compromising the public safety goals embodied in this rule part.”⁶ These rule sections duplicate requirements found elsewhere in the Commission’s rules, conflict with FAA requirements, or are no longer relevant. Accordingly, CTIA concurs with the suggestion that Part 17 be substantially amended.⁷

The safety concerns that Part 17 is intended to address fall within the jurisdiction of both the Commission and the FAA. CTIA encourages further coordination between the FCC and the FAA to establish procedures that serve the public interest by maintaining air traffic safety while streamlining those Part 17 rules that are inconsistent and place undue burdens on the wireless industry and these agencies.

To the extent that the Commission’s tower siting rules in Part 17 contribute to confusion among wireless carriers and are inconsistent with FAA policies, the Commission should amend or repeal such requirements. The deployment of efficient and ubiquitous wireless telecommunications services is obviously dependent upon the timely construction of the infrastructure needed for the provision of that service. For mobile wireless providers, towers and antenna structures are absolutely critical to the provision of nationwide wireless service. In this competitive market, carriers (or firms specializing in tower construction and maintenance) must be permitted to construct towers quickly, efficiently, and without confusion. Any delays in

⁶ Staff Report, Appendix IV, at 21.

⁷ See id., nn.47-49 (identifying, among others, sections 17.6, 17.23, 17.45, 17.48, 17.53, 17.54, 17.4, and 17.57 as necessitating Commission review).

tower siting, whether due to inefficiencies inherent in Part 17 or other factors beyond carriers' control, results in unnecessary delays in the continued deployment of competitive wireless services and the availability of these services to the public.

As the Commission has noted, the Part 17 regulations serve the public interest by establishing "procedures for identifying those antenna structures that might affect air navigation and for registering such structures with the Commission."⁸ The Commission's rules should thus balance its obligation to preserve air safety and its obligation to avoid unnecessary restrictions on the availability of telecommunications services nationwide.

In addition to the Staff Report, the comments of Alloy and USTA demonstrate that certain of these rules require clarification and better coordination between the Commission and the FAA. Specifically, Alloy requests that Section 17.23 of the Commission's Rules be modified, and also suggests that the Commission work with the FAA to adopt the exemptions found in Section 17.14(b).

Section 17.23

Under Section 17.23, the Commission has ordered carriers to comply with the FAA's recommendations (Circulars) for painting and lighting of antenna structures.⁹ In its comments, however, Alloy explains that the FAA disagrees with this conclusion and would prefer not to be informed of modifications to antenna structures unless lighting is discontinued. This

⁸ Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, WT Docket No. 95-5, *Memorandum Opinion and Order and Order on Reconsideration*, 15 FCC Rcd 8676 (2000), ¶ 2 ("Antenna Structure Order"); see also Staff Report, Appendix IV, at 20 ("The purpose of Part 17 is to insure that tower owners do not construct structures that may pose a hazard to air navigation.").

⁹ 47 C.F.R. § 17.23 ("For purposes of this part, the specifications, standards, and general requirements stated in [FAA Circular recommendations] are mandatory.").

inconsistency clearly demonstrates a discrepancy in the coordination between the Commission and the FAA. Recently, the Commission reaffirmed its commitment to process tower registration applications “in a manner wholly consistent with the FAA’s procedures.”¹⁰ Similarly, the Commission should adhere to this policy when Part 17 rules must be interpreted and applied in conjunction with FAA Circulars and policies. For these purposes, Section 17.23 should be made consistent with the FAA’s notification requirements. Such consistency of interpretation and application will lead to better compliance by carriers, a more efficient application process for tower siting, and the continued, rapid deployment of nationwide wireless services.

Section 17.14(b)

CTIA also supports Alloy’s recommendation that the Commission work in conjunction with the FAA to adopt the FCC’s 20-foot rule exception to the FAA notification requirement. Section 17.14(b) provides that notification to the FAA is not required for the construction or alteration of any antenna structure of 20 feet or less in height, unless such construction would increase the height of another antenna structure. The adoption and application of this exception by both the FCC and the FAA would further streamline the antenna registration process without undermining the purpose of tower registration to ensure the safety of air traffic.

¹⁰ Antenna Structure Order at ¶ 6.

**PART 22-- PUBLIC MOBILE SERVICES -- SUBPART H -- CELLULAR RADIO
TELEPHONE SERVICE**

In its comments, CTIA emphasized the importance of regulatory symmetry between the Commission's regulation of cellular and PCS carriers.¹¹ Lack of regulatory symmetry where all else is equal will disadvantage both certain competitive service providers and the consuming public. As demonstrated in the comments, the Commission's renewal requirements for cellular and PCS carriers presently suffer from a lack of symmetry. The Commission should amend Section 24.16 of the Commission's Rules to conform with the cellular renewal procedures found in Sections 22.935 through 22.940, 47 C.F.R. §§ 22.935-22.940.

CTIA also wishes to point out that no commenter other than CTIA appeared to have addressed the Staff Report's suggestion that the Commission privatize the assignment of cellular system identification numbers ("SIDs"), 47 C.F.R. §22.941. CTIA supported this proposal and proposed that its wholly owned subsidiary, CIBERNET, assume management responsibility for cellular SID assignment.¹² As the comments explained, CIBERNET presently provides the same service to PCS providers and CIBERNET maintains a supply of SIDs used for PCS that could seamlessly be used by cellular carriers as well. CTIA anticipates working with the Commission to ensure that the SID assignment process is privatized in an efficient, timely, and cost-effective manner.

¹¹ CTIA Comments at 10.

¹² CTIA Comments at 7-8.

PART 22, SUBPART J -- REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

The Staff Report recommends that the Commission reconsider its carrier capability requirements for CALEA compliance. CTIA agrees. As explained in the Staff Report, the Commission's Rules were recently vacated by the D.C. Circuit¹³ and remanded for further proceeding at the Commission. The Staff Report, however, appears to limit its suggested action to reconsidering the technical rules vacated by the court. CTIA concurs with USTA's comments that the Commission should also suspend enforcement of the compliance deadline for the implementation of packet-mode surveillance capabilities in carrier networks.¹⁴ In addition, the Commission should suspend the compliance deadline for all of the outstanding punch-list items until it has completed its remand proceeding.¹⁵

In its ruling, the court upheld the Commission's decision to include packet-mode data in the CALEA compliance standard.¹⁶ Under the Commission's rules, carriers have until September 2001 to deploy the necessary upgrades to include packet-mode data.¹⁷ The remand

¹³ USTA v. FCC, 2000 U.S. App. LEXIS 19967 (D.C. Cir. 2000).

¹⁴ USTA Comments at 12.

¹⁵ See Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, *Petition To Suspend Compliance Date* (filed Aug. 23, 2000) (requesting the Commission suspend the compliance date for the two unchallenged punch list items and packet mode communications pending completion of proceedings in the CALEA docket on the court's remand and on receipt and evaluation of the JEM report); see also Commission Seeks Comments to Update the Record in the CALEA Technical Capabilities Proceeding, CC Docket No. 97-213, *Public Notice*, DA 00-2342 (rel. Oct. 17, 2000) (seeking comment on the remand proceeding, but failing to suspend enforcement of the punch-list requirements.).

¹⁶ USTA at *44.

¹⁷ 47 C.F.R. § 22.1103(b).

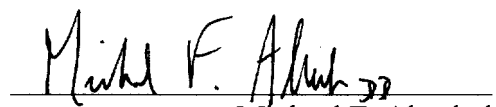
proceeding addressing additional capabilities, however, is closely related and the outcome of that proceeding will affect carriers' deployment schedule for implementing switch upgrades. Thus, pending completion of the related proceeding on remand, the Commission should suspend enforcement of the packet-mode capabilities requirement. This would allow carriers a reasonable opportunity to implement all necessary switch upgrades in an efficient manner.

CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission adopt a notice of proposed rulemaking that minimizes the regulatory burdens imposed on competitive CMRS providers.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**


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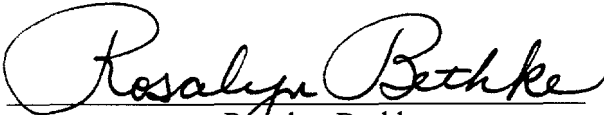
October 20, 2000

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 20th day of October, 2000, copies of the attached document were served by hand delivery on the following parties:

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